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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 644 (JSR)

5 STEVEN PEREZ,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 December 9, 2022  
4:00 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS,

15 United States Attorney for the  
Southern District of New York

16 BY: ASHLEY NICOLAS

Assistant United States Attorney

17 DAVID PATTON

18 FEDERAL DEFENDERS OF NEW YORK

Attorney for Defendant

19 BY: ZAWADI S. BAHARANYI

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1 (Case called)

2 MS. NICOLAS: Good afternoon, your Honor. AUSA Ashley  
3 Nicolas for the government.

4 THE COURT: Good afternoon.

5 MS. BAHARANYI: Good afternoon, your Honor. Zawadi  
6 Baharanyi with the Federal Defenders. Mr. Lucha, that is the  
7 preferred name, your Honor.

8 THE DEPUTY CLERK: So Lucha Perez?

9 MS. BAHARANYI: Just Lucha.

10 THE DEPUTY CLERK: Can you spell that?

11 THE WITNESS: Yes, ma'am. L-u-c-h-a. The title, the  
12 last name would be El, capital E, lower case L, Lucha El.

13 MS. BAHARANYI: Your Honor, before we again, we have a  
14 matter of presentation that I would like to bring to the  
15 attention of the Court.

16 THE COURT: Okay.

17 MS. BAHARANYI: Lucha has informed me he would like to  
18 represent himself going forward and he would like me to remain  
19 on as standby counsel, and I would like to continue to assist  
20 him in this case, your Honor, but that is something that he's  
21 invoked, he's informed me of today.

22 THE COURT: Well, I will certainly hear him on that,  
23 but I think, first, we need to arraign him and then we'll see  
24 what the situation is.

25 So let me ask counsel, have you gone over the

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1 indictment with him?

2 MS. BAHARANYI: We have, your Honor. I've reviewed  
3 it with Lucha, he's read it and understands it and he does  
4 intend to enter a plea of not guilty.

5 THE COURT: A plea of not guilty will be entered.  
6 How long does the government want for the completion  
7 of discovery?

8 MS. NICOLAS: Thank you, your Honor. The discovery in  
9 this case is relatively straightforward.

10 I will note for the Court the codefendant in this case  
11 is currently in the Southern District of Georgia, and I believe  
12 he's appearing before your Honor on December 19th. Given his  
13 expected appearance in this court, as well as the intervening  
14 holiday, I believe the volume is relatively straightforward, we  
15 would ask for three weeks for production.

16 THE COURT: Today is December 9th. So that would be  
17 December 30th. How long thereafter, and this would apply if  
18 the defendant winds up representing himself, how long, though,  
19 does counsel think would be appropriate for any motions to be  
20 put?

21 MS. BAHARANYI: Your Honor, at this time, I'm not sure  
22 what the volume is of that discovery --

23 THE COURT: I think we just heard from the government  
24 that it's not particularly large.

25 MS. BAHARANYI: I guess I'm not sure exactly what that

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1 means, your Honor. I would ask for a month to review and to  
2 make sure Lucha has that much time to review the discovery.

3 THE COURT: Well, normally, I wouldn't even consider a  
4 month. I will, however, in this case only because if, in fact,  
5 he winds up representing himself, I'm not going to change the  
6 schedule because of that and he will still have only that one  
7 month to file any motions. This is a month after discovery.  
8 So that would be January 30th --

9 THE DEPUTY CLERK: Friday, January 27th.

10 THE COURT: Okay. Friday, January 27th, that's four  
11 weeks for any motions.

12 Then we'll have a conference.

13 What's the next business day we have available?

14 THE DEPUTY CLERK: How about Friday, February 3rd, at  
15 4:00.

16 THE COURT: Friday, February 3rd, at 4:00.

17 That time, if motions have been made that can be dealt  
18 with orally, they will be. If motions have been made that  
19 require a written response, we'll set a date then for the  
20 written response. In any event, we'll set a trial date at that  
21 time.

22 Pursuant to Section 3161 of Title 18, I will exclude  
23 from calculations under the Speedy Trial Act all time between  
24 now and February 3rd, providing such time is necessary to  
25 complete discovery and draft motions, and for those and other

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1 reasons, the best interests of justice in excluding such time  
2 substantially outweighs the interest of the public and the  
3 defendant in a speedy trial.

4 Now, let's talk about the request to go *pro se* to  
5 represent yourself.

6 So, do you have any legal training?

7 THE DEFENDANT: What was that, your Honor?

8 THE COURT: You can stay seated, but just bring that  
9 microphone close to you.

10 Do you have any legal training?

11 THE DEFENDANT: I've studied -- I studied my law. I  
12 studied the Constitution, I studied codes and regulations.

13 THE COURT: For example, I just made a ruling under  
14 Section 3161 of Title 18 of the United States Code. Do you  
15 have any idea what that is?

16 THE DEFENDANT: Not exactly, but I can go look it up.

17 THE COURT: So it takes most people three years to  
18 learn the law and then it takes them several more years to  
19 become proficient in practice, but you're going to do it in the  
20 next few weeks?

21 THE DEFENDANT: Well, your Honor, to my understanding,  
22 the Constitution is the supreme law of the land and nothing is  
23 above it.

24 THE COURT: That's right, but there's a lot below it,  
25 most of which is what will be involved in your case.

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1 THE DEFENDANT: I comprehend, your Honor. But also,  
2 it's to my understanding that anything that is contrary to the  
3 Constitution is notwithstanding. So it's --

4 THE COURT: So that may be, but if you say to me, I  
5 think some proceeding in this case is unconstitutional and I  
6 disagree with you, what are you going to do then?

7 THE DEFENDANT: If you disagree, I mean -- this is  
8 what the court venue is for, to clarify what's wrong and what's  
9 right and what is and what isn't.

10 THE COURT: Well, my point is this, every time someone  
11 has appeared *pro se* in my court, the jury has convicted them  
12 like that, in a matter of minutes, and that was because they  
13 didn't know the proper way to defend themselves. They thought  
14 they knew it because Hope Springs Eternal or because they  
15 thought they were smart or because they thought they could bone  
16 up on the law, but it turns out they were wrong, and all those  
17 people who are very vigorous in deciding that they could  
18 represent themselves wound up going to prison.

19 Now, maybe you're the great exception, but I want you  
20 to understand the risk that you're undertaking. You're making  
21 it much more likely that you'll lose this case than would  
22 otherwise be the case.

23 Do you understand that?

24 THE DEFENDANT: I comprehend, your Honor. I just feel  
25 as if I'm using nothing but the supreme law. I don't feel that

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1 I'm above the law. I respect the law and I honor the law. I  
2 swore an oath to always respect the law.

3 THE COURT: That's fine. I'm not talking about law,  
4 I'm talking about your life.

5 THE DEFENDANT: I comprehend.

6 THE COURT: And I'm just saying if you want to  
7 increase your chance of spending a substantial part of your  
8 life in prison, the best way to do it is to represent yourself.

9 THE DEFENDANT: I comprehend, your Honor. As you just  
10 gave me an example, I would like to give an example, if I may.

11 THE COURT: An example of what?

12 THE DEFENDANT: Well, you just asked me -- you just  
13 told me if you asked me a question about law -- I don't want to  
14 go verbatim because -- you basically said to me right now, if  
15 you say one thing and I say the other, we disagree, then how  
16 would we work that out? So I just want to say that if I read  
17 something and I do the research and I comprehend it for what it  
18 is, for example, like something simple, like, okay -- how can I  
19 put it best? Something simple like, okay, United States Labor  
20 v. Rodriguez. For example, statutes, codes, and regulations  
21 are not law. I didn't -- this is not something that I -- this  
22 is just an example I'm just trying to give you, your Honor.  
23 This is not something that I made up, this is a case law from a  
24 federal case. So if a federal case law is telling me that  
25 statutes, regulations, and codes are not law, if a federal

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1 judge --

2 THE COURT: In what case? So we'll see if you can act  
3 as your own lawyer. What is the first name of Mr. Rodriguez?

4 THE DEFENDANT: What was that?

5 THE COURT: What's the name of Mr. Rodriguez? You  
6 said the case was United States v. Rodriguez; right?

7 THE DEFENDANT: Yeah. I was just giving an example --

8 THE COURT: Excuse me. And there are about a thousand  
9 cases by that name, and I want to look at the one you're  
10 referring to.

11 THE DEFENDANT: I don't have the exact codes in front  
12 of me.

13 THE COURT: Do you have even his name?

14 THE DEFENDANT: Not on the paperwork with me right  
15 now.

16 THE COURT: So, this is a good example.

17 THE DEFENDANT: Okay, but --

18 THE COURT: How can I make a decision on something  
19 that you're asserting based on a case that you don't even give  
20 me enough information to find?

21 THE DEFENDANT: Your Honor, I was just giving you an  
22 example. I'm not trying to use this case as a basis for  
23 anything right now.

24 THE COURT: But I have a feeling deep in my heart that  
25 you probably are not interpreting that case correctly, but I



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1 could be wrong. I'll never know until I see the case.

2 THE DEFENDANT: So, we won't know until we get there,  
3 but again, I'm not using that right now to defend myself. I'm  
4 just giving you an example as you did. I'm just saying, for  
5 example, if that statement was made in the case, let's just say  
6 hypothetically that is what it says, that statutes, codes, and  
7 regulations are not law, and that's a federal case --

8 THE COURT: It's almost impossible that there's a case  
9 that says that, extremely unlikely. Extremely unlikely. But  
10 I'm happy to look at any case that you can give me the  
11 information to find the case, but I need the name, I need the  
12 citation.

13 THE DEFENDANT: That's what my affidavits and my  
14 motions will be for, your Honor.

15 THE COURT: Let's talk about that. I have a strict  
16 rule, and that is that no one can submit any affidavit, any  
17 papers, any emails, any written communication in any of my  
18 cases until they first convene a telephone conference call with  
19 the government and the Court, and that saves both you and me a  
20 lot of time because, often, it's matters I can deal with right  
21 then and there on the telephone.

22 So if you're planning to submit something, you're  
23 going to have to get a hold of the government and get on the  
24 phone, and then if I agree, you can then submit something in  
25 writing, we'll give you a date to do it by, and you'll have to

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1 learn how to file it with the clerk of the court. If you don't  
2 do that and just send me something in the mail or by email or  
3 however, I will disregard it, I will pay no attention, I will  
4 not read it.

5 So, there are a lot of hurdles. The lawyer who  
6 presently represents you is an extremely accomplished lawyer.  
7 The Federal Defenders in the Southern District of New York are  
8 among the best lawyers in the whole country. You can't get a  
9 job as a Federal Defender in New York without competing among  
10 the very best lawyers, and only the best of the best are  
11 chosen. So why do you want to give that up?

12 THE DEFENDANT: I'm asking her to still be my standby  
13 and she agreed.

14 THE COURT: Well, I haven't agreed yet. So it seems  
15 clear from what you just said that you recognize that you need  
16 to have someone who is learned in the law through years of  
17 training and experience to at least help you out. That's why  
18 you're asking her to stand by; right?

19 THE DEFENDANT: Not really. I'm asking for her as  
20 standby because my experience dealing with the courts around  
21 this country, whether I say I want to present myself or not, *in*  
22 *propria persona*, the courts are going to still force somebody  
23 by my side, whether I say I want to present myself, whether  
24 they find me competent enough to present myself, they always  
25 stick somebody at my side. It's something that I've already

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1 gone through more than once and it's an experience --

2 THE COURT: But in this case, it's up to me, it's not  
3 up to some other judge in some other case.

4 THE DEFENDANT: I comprehend that.

5 THE COURT: So what I'm having difficulty with is  
6 this: So supposing you want to file an affidavit.

7 THE DEFENDANT: Yes.

8 THE COURT: So the first thing you would have to do is  
9 convene a telephone call with the prosecutor and then the two  
10 of you would jointly call me and I would ask what the affidavit  
11 is about. I would decide whether or not I want to let you file  
12 the affidavit and I would decide what date, if I did allow you  
13 to file it, what date you would file it and so forth.

14 Now, if you had counsel, she could do all that. If  
15 she is only acting as standby counsel, she can't do that.  
16 That's not the role of standby counsel. You have to do it.  
17 She might be on the telephone with you, but you got to do it.

18 Why do you want to put yourself in that position?

19 THE DEFENDANT: First of all, sir, I feel every man  
20 should deal with his own affairs, especially if he feels and  
21 knows he has done nothing wrong.

22 Again, I'm in a federal courtroom saying I'm willing  
23 to present myself because I feel the federal courtroom would be  
24 the most honorable. Every other state court I went to was not  
25 honorable.

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1 THE COURT: Well, I have no idea what your other  
2 situation is, but I certainly agree that federal courts tend to  
3 be very high quality courts, and I hope to live up to that in  
4 every case I have.

5 But here's what really bothers me. If, in fact, you  
6 are innocent, then a tragedy would be for you to be convicted.  
7 So I don't understand why you want to increase the chance that  
8 you will be convicted by representing yourself when the -- if  
9 you are innocent, a very accomplished lawyer like the one who  
10 presently represents you could do a much better job of proving  
11 your innocence.

12 I'll give you a simple example. Supposing the case  
13 goes to trial and you want to get up on opening statement and  
14 start describing your recollection of the underlying events.  
15 The likelihood is I'll have to cut you off because it will go  
16 beyond what is permitted to a lawyer on opening statements, and  
17 for opening statements you're acting the role of a lawyer.  
18 Your lawyer would know where the line is drawn, she would know  
19 what she could say on opening statements, and not get cut off,  
20 and what she couldn't. None of this would preclude you from  
21 later on testifying if you wanted to, and you have a right to  
22 testify. You also have a right not to testify. But, when  
23 you're acting *pro se*, now you have to play by the rules of  
24 being a lawyer and, therefore, many, many things would result  
25 in my saying this is what's happening.

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1 Many, many *pro se* cases I've had, the defendant gets  
2 up and he or she speaks for about two minutes and then I have  
3 to cut them off because the law says that a lawyer can't give  
4 an opening statement that goes beyond certain boundaries for an  
5 opening statement.

6 So there it is, you've hurt yourself, whereas your  
7 lawyer could do everything you wanted to do because she would  
8 know where the lines are drawn.

9 So it's really hard for me to know why you think  
10 you'll be better off if you are innocent, as you assert. It  
11 would be a tragedy for you to be convicted. No one would be  
12 more upset than me. I've written a whole book on this. And  
13 what I am constantly amazed at and heartbroken by is people who  
14 don't have legal training, thinking that they can help  
15 themselves by pretending to be a lawyer. It's a little bit  
16 like if you were suffering from a heart problem and you needed  
17 surgery and you said I'm not going to have you operate on me,  
18 doctor, I'm going to operate on myself, even though I never had  
19 any medical training, and the likelihood is you will kill  
20 yourself.

21 So, you have an absolute right to go *pro se*, I just  
22 want you to be very aware of how stupid that might be.

23 You understand?

24 THE DEFENDANT: I comprehend.

25 THE COURT: All right. So, do you want to think about

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1 it for a day or two before you make a final decision?

2 MS. BAHARANYI: Your Honor, if I may have one moment.

3 THE COURT: Yes.

4 (Defendant and counsel conferred)

5 MS. BAHARANYI: Thank you, your Honor. We've had a  
6 moment to consider the Court's words. We do think at this time  
7 he does not want to move forward with the motion to represent  
8 himself. I will stay on as his counsel.

9 THE COURT: Okay. I think that's a very wise  
10 decision, and I think you're lucky to have such a good lawyer.

11 So, we had the schedule, I don't think there's  
12 anything else we needed to take up today, unless counsel has  
13 anything else.

14 MR. MEAD: There's nothing from the government's  
15 perspective, your Honor.

16 THE COURT: Anything from defense?

17 MS. BAHARANYI: Not from the defense, your Honor.  
18 Thank you.

19 THE COURT: Very good. Thanks a lot.

20 \* \* \*